

VILLAGE OF RICHMOND  
REGULAR BOARD MEETING  
January 22, 2009

**PRESIDING:** President Lauri Olson

**PRESENT:** Trustees Dennis Bardy, Charlotte Hollenbach, Bruce Hunter, David Kielpinski, Peter Koenig, Cindy Walleck

**ALSO PRESENT:** Village Administrator Tim Savage, Engineer Ed Coggin, Attorney David McArdle

President Olson called the meeting to order at 7:00 p.m. at the Richmond Village Hall, 5600 Hunter Drive.

**ROLL CALL:** President Olson, Trustees Bardy, Hollenbach, Hunter, Kielpinski, Koenig and Walleck were present.

**MINUTES:** Koenig moved to approve the minutes of the January 8, 2009 meeting. Seconded by Kielpinski and passed by unanimous voice vote.

**ANNOUNCEMENTS/REQUESTS:** President Olson announced the Richmond Spring Grove Chamber dinner being held January 30<sup>th</sup>. RSVP's are due Friday, January 23.

**UNFINISHED BUSINESS:**

a. Savage presented the Intergovernmental Agreement between the Village and the Richmond Township Fire Protection District which provides for the use of the south water tower for the District's radio antenna. Concerns had been raised about the potential incompatibility with the existing antenna (Village SCADA, Wonderwave antenna and any future cell antenna.) Savage stated that he spoke with the District and Radicom and is comfortable with page 4, section 4 of the agreement. According to Radicom, interference can be controlled by regulating the height and placement of additional antennas and the burden of insuring non-interference will be placed on any new installations. The Fire District has agreed to add a sentence on page 3, under section 2 that the antenna will meet with the Village's inspection and will be professionally installed. Koenig has heard that the District plans to use Radicom for the installation. Coggin assured the Board that the new antenna will be completely compatible with the SCADA antenna. After further discussion Koenig moved to authorize the Village President to execute the Intergovernmental Agreement with the Richmond Township Fire District, as amended with the addition on page 3, section 2. Seconded by Hollenbach and passed with Bardy, Hollenbach, Hunter, Kielpinski, Koenig and Walleck voting yes.

b. Casino Night Agreement between the Village of Richmond and the Odd Fellows Lodge 870 was presented by Trustee Walleck. The agreement sets out the terms and conditions for the casino night event which will be held at Memorial Hall on February 28. International House will obtain the off premises liquor license and a portion of the proceeds will be donated to the Memorial

Hall Fund. Hunter moved to authorize the Village President to execute the agreement. Seconded by Bardy and passed with Bardy, Hollenbach, Hunter, Kielpinski, Koenig and Walleck voting yes.

c. Plans for the septic receiving station at the new WWTP were reviewed by the General Services Committee. Savage reported their recommendation to modify the WWTP to receive septic at the rate of 10,000 gallons per day. Modification will include the gate, card reader, flow monitor and receiving facility at the front of the building. Coggin reported that after doing some initial testing it has been determined the plant can handle 10,000 gallons and a cost of between \$55,000 and \$70,000 (excluding engineering). A larger, 20,000 gpd system would cost between \$225,000 and \$250,000. Coggin assured the Board that receiving an additional 10,000 gpd will not impair the Village's ability to issue new sewer permits or to re-issue the Prairie Hill expired permits. After further discussion, Koenig moved to authorize Smith Engineering to proceed with development of the plans for a 10,000 gpd unit and permit submittal to the EPA at a cost not to exceed \$7,600.00 Seconded by Kielpinski and passed with Bardy, Hollenbach, Hunter, Kielpinski, Koenig and Walleck voting yes.

**PUBLIC COMMENTS:** None

**NEW BUSINESS:**

a. FY 09 Budget amendments were presented by Savage, who explained that the higher cost of salt has necessitated transferring budgeted Streets line item funds from Mosquito Abatement, Gas & Oil and Other Professional Services into Operating Supplies. Bardy moved to approve the transfers as presented. Seconded by Hunter and passed with Bardy, Hollenbach, Hunter, Kielpinski, Koenig and Walleck voting yes.

b. Marcamp legal action. McArdle introduced the facts leading to the pending lawsuit against the Village filed by Marcamp in 2003 as follows: In 2001, the Village entered into a poorly negotiated and poorly drafted Annexation Agreement with Marcamp Investments, Inc. and Northeastern Illinois Land Management. Under the terms of that Agreement, Marcamp had obligations, which the Village contends, were breached and the Village had obligations which Marcamp contends the Village breached.

In 2003, because Marcamp failed to make proper sewer connections to the Kensington sewer system, the sewer line failed causing a sewerage spill. As a result, the pending lawsuit was filed by Marcamp against the Village. Much activity took place in the first couple of months of the lawsuit and ever since, the parties have tried to settle the case. When the current administration came in, a tremendous amount of time was spent for approximately 1½ years trying to reach written agreements, approve certain plats of subdivision and obtain compliance of monetary obligations by Marcamp. None of these efforts were successful.

Upon the current Village Board coming into office, new attempts were made by new Board members to sit down and settle matters with Peter Bell and his team for approximately 1 year. Again, these efforts failed.

Both parties have reached the end of any good faith negotiations and it is time to pursue the lawsuit and let the Court determine the fate of both parties.

On behalf of the Village a Counterclaim and Third Party Complaint has been prepared which sets forth the material breaches of the Annexation Agreement by Marcamp, Tamarack and Northeastern Illinois Land Management. The basis of the lawsuit includes (a) recovery of the retained personnel fees due the Village in the amount of \$156,344.00, (b) failure by the Developers to prepay sewer and water connection fees in the amount of \$1,163,502, to date and (c) damages

incurred by the Village for the Developer's failure to make the Kensington connection to the sewer line in the amount of \$109,538.00 plus the \$20,000 fine paid to the IEPA. Total damages claimed under the Complaint are \$1,449,385.00.

In addition, the draft complaint seeks a declaration that the Annexation Agreement is terminated due to the material breaches by the Developers and allow the damages incurred to date.

The equity of the Complaint is based on the prejudice sustained by the parties relative to the alleged breaches. On the one hand, the Developers allege that the Village breached the Annexation Agreement by delaying construction of the Wastewater Treatment Plant. However, the Developers have sustained no damage as a result of any alleged breach because they have failed to show any intention of building any homes. Note that the Village has always had sufficient capacity in the prior wastewater plant and in the current wastewater plant to accommodate at least the first phase of any potential development. On the other hand, because of the financial breaches by the Developers, the Village has sustained over \$1.5 million worth of damages and fully constructed a Wastewater Treatment Plant that now has to be paid for by the rate paying residents of the Village of Richmond. On this basis, the equity favors the Village and the lawsuit should be pursued.

Discussion ensued. Bardy moved that the Village Board declare the annexation agreement with Marcamp Investments, authorized by Ordinance No. 2001-20 be terminated effective immediately due to Marcamp's material breaches and that the Village Attorney file a counter claim and third party complaint in the pending lawsuit to recover damages incurred by the Village, and declare the annexation agreement terminated. Seconded by Walleck and passed with Bardy, Hollenbach, Hunter, Kielpinski, Koenig and Walleck voting yes.

c./d. Savage presented Ordinance 2009-2, authorizing issuance of \$600,000 General Obligation Debt Certificates. He went through changes and corrections made to the first draft dealing with payment dates (changing from January/July to February/August throughout the agreement and exhibits) and interest rate on the \$300,000 non-taxable portion of the debt, which was adjusted to 4.80% . On page 14 a line has been added stating that the cost of issuance shall be paid from the General Fund on the date of issuance. Savage said that there will be no charges from the bank and the only fees will be the costs incurred by Bond Counsel (from \$7,000 to \$8,000). On page 16 a line has been added pledging that any additional bonds or obligations which may be issued and secured by Sales Tax shall be subject to approval by the Purchaser which is the First National Bank of McHenry. Savage explained that a tax intercept has been set up whereby the debt service is paid for out of sales tax. To protect the bank's interest, any additional debt which is pledge by sales tax must be approved by the bank. The contract borrows a total of \$600,000 under the General Fund, pledging the sales tax revenues and granting the financial institution the right to intercept our sales tax revenues at the state level. Two series are being issued, \$300,000 tax exempt at 4.80% and \$300,000 taxable series at 7%. Additions and modifications were made on pages 13 (16(a), amount \$0.00); page 3(k) \$7,545,841-total outstanding principle owed by the Village; page 6 definitions, 2009 project is defined on page one, section 1(b) not 1(i). The money that will be taken out of sales tax revenues has already been included in the budget (\$75,000 in the 09 budget). The redemption option on page 8 section (a) means that the Village can pre pay without penalty. The redemption of certificates referred to on page 10(e) can be done either at the bank or the Village Hall. Page 20. Section 24(b)(iv) means that the total of all tax exempt obligations issued by the village during 2009 is not expected to exceed \$5,000,000. Hunter moved to pass Ordinance 2009-2 Authorizing Issuance of \$600,000 General Obligation Debt Certificates, and also approving the Installment Purchase Contract related to the Debt Certificate Issuance. Seconded by Bardy and passed with Bardy, Hollenbach, Hunter, Kielpinski, Koenig and Walleck voting yes.

e. Savage informed the Board that the current Case 580SK loader/backhoe is over 20 years old and has developed engine problems and needs to be replaced. He recommended declaring the backhoe as surplus property to be used as a trade in for a new used backhoe not to exceed \$30,000. Quotes were received and discussed at an earlier budget meeting with a new backhoe costing in the area of \$77,000. Savage feels a decent used one can be purchased for less than \$30,000. First National Bank has money available for 36 months at 4% or 24 months at 3.75%. The Finance Committee had discussed consolidating the outstanding vehicle debt - Police Durango and motorcycle both of which are under lease. According to Savage the Bank is willing to put all three vehicles together. Kielpinski moved to declare the Case 580SK loader/backhoe as surplus and to approve purchase of a used Backhoe/Loader not to exceed \$30,000. Seconded by Koenig and passed with Bardy, Hollenbach, Hunter, Kielpinski, Koenig and Walleck voting yes.

**PRESIDENT'S COMMENTS :** President Olson distributed the recycling schedule from Veolia.

**ADMINISTRATOR'S COMMENTS:** None

**TRUSTEE COMMENTS:** Kielpinski asked for information on the Revolving Fund. Because it is a proprietary fund, restricted in use, it doesn't show up as a line item on the budget but is included under investments. The amount of money loaned to businesses is based on the number of jobs created or retained. The State now allows the money to be used for infrastructure in support of economic development under the Community Block Grant rules.

There was no further business. Kielpinski moved to adjourn. Seconded by Bardy and passed by unanimous voice vote. 7:48 pm.

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Kathleen Hellmann, Village Clerk